

RON WYDEN
OREGON

223 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-5244
(202) 224-1280 (TDD)

United States Senate
WASHINGTON, DC 20510-3703

May 25, 2010

Chairman Julius Genachowski
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Genachowski,

I write to call upon the Federal Communications Commission to immediately conduct an investigation into Early Termination Fees (ETFs) for wireless devices, to help determine the costs that wireless providers are attempting to offset through such fees. The nation's largest wireless carriers claim that these ETFs, which can now be as high as \$350, are in place primarily because of the subsidized price charged to consumers when they initially purchase a phone from their wireless carrier. Unfortunately, current data collected by the FCC does not include information about pricing structures for wireless devices. Consumers are in the dark about how much they are paying for their wireless device, regardless of whether they are subject to an ETF.

Given Verizon Wireless' response to the FCC's 2009 inquiry regarding ETF structures for "advanced devices," it appears that the cost of these termination fees are based on much more than recouping the wholesale cost or retail value of the wireless device. In its response to the FCC inquiry, Verizon stated that, "the ETF is not limited to the recovery of the wholesale cost of the device over the life of the contract... the ETF partially compensates Verizon Wireless for all the costs and risks of providing service, which include advertising, commission, store costs, and network costs." Industry's responses to the FCC's inquiry strongly suggest that ETFs are designed to socialize the costs of devices among all of a firm's wireless subscribers. The recent announcement by the nation's largest wireless providers that their ETFs will substantially increase conspicuously coincides with the anticipation that new smart phones will be on the market early this summer. It is unclear whether these new fees are related to the expense of the new smart phones, or whether they are designed to limit a firm's uncertainty about the marketplace.

The ETF seems to have little basis on the cost of the phone that a consumer chooses to buy. The obscure manner in which ETFs are constructed does little to benefit consumers or competition in the marketplace. The pricing structures that wireless carriers employ blur the line between the price of a handheld device and the voice and data service. In conducting its investigation, I ask that the FCC also determine to what extent monthly service charges for voice and data communication are established to finance the costs of wireless devices across all of the carrier's subscribers. The wireless marketplace is now dominated by only a few national providers; it would be valuable to know whether any of them reduce their monthly service fees once costs associated with a subscriber's handheld device are recouped.

WTB
CMPS
PV
JC
876

1220 SW 3RD AVE
SUITE 585
PORTLAND, OR 97204
(503) 326-7525

405 EAST 8TH AVE
SUITE 2020
EUGENE, OR 97401
(541) 431-0229

SAC ANNEX BUILDING
105 FIR ST
SUITE 201
LA GRANDE, OR 97850
(541) 962-7691

U.S. COURTHOUSE
310 WEST 6TH ST
ROOM 118
MEDFORD, OR 97501
(541) 858-5122

THE JAMISON BUILDING
131 NW HAWTHORNE AVE
SUITE 107
BEND, OR 97701
(541) 330-9142

707 13TH ST
SUITE 285
SALEM, OR 97301
(503) 589-4555

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Mobile communication is now ubiquitous in America – the wireless industry enjoys a penetration rate of 90 percent and cellular networks are primary means of telephonic communication for over a third of American households. It is hard to see how consumers and competition can drive innovation in the marketplace when consumers must choose their wireless carrier based upon the devices they offer, and must stay with a sub-optimal carrier in order to avoid exorbitant exit fees.

I appreciate the inquiries the FCC has recently made regarding this issue and believe that it raised appropriate and timely questions. To more clearly understand ETFs and their role in the wireless market, the FCC, Congress, and the American public would benefit from understanding the pricing structures employed by wireless carriers to finance subscriber handsets.

Sincerely,

A handwritten signature in black ink that reads "Ron Wyden". The signature is written in a cursive, flowing style.

Ron Wyden
United States Senator



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

September 28, 2010

The Honorable Ron Wyden
United States Senate
223 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Wyden:

Thank you for your letter sharing your thoughts regarding wireless service providers' use of Early Termination Fees (ETFs), and urging the Commission to conduct an investigation into the use of ETFs for mobile wireless services.

In January 2010, the Commission's Consumer and Governmental Affairs and Wireless Telecommunications Bureaus sent letters to the major wireless carriers to gather facts and data on the consumer experience with ETFs. These letters sought information on the relationship between ETFs, the cost of the handset, and the service rates offered by each wireless provider. The carriers' responses were informative. Verizon's response, among other things, asserts that the company was making two changes to its practices since December 2009: changing the price cards displayed next to devices in its stores to include the amount of the ETF for each device, and reducing the number of devices subject to the \$350 ETF.

Transparency and disclosure are central to the Commission's examination into ways of empowering consumers to make informed decisions at all stages of the purchasing process for communications services. The Commission is working proactively to eradicate consumer confusion surrounding ETFs, unexpected charges ("bill shock"), and other issues facing wireless consumers. Our most recent effort is a *Public Notice* released in May by the Consumer and Governmental Affairs Bureau seeking possible solutions for "bill shock." The Commission also has requested information on ETFs and "bill shock" as part of the 15th Report on the State of Mobile Wireless Competition inquiry.

Commission staff is reviewing the comments and information submitted to date in response to these proceedings and initiatives, and we will include your letter as part of that review. I look forward to the recommendations from staff regarding the next steps, and to working with you further on these important matters. Please let me know if you have any additional questions or concerns.

Sincerely,



Julius Genachowski